

1
2 WHEREFORE, petitioner King County prays that judicial
3 review of the decision and order of the Pollution Control
4 Hearings Board be granted and that the court reverse that
5 decision and order.

6 DATED this 10th day of December, 1984.

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8 NORM MALENG
King County Prosecuting Attorney

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11 By: 

12 JACK G. JOHNSON
13 Deputy Prosecuting Attorney
Attorneys for Petitioner
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NOTICE OF APPEAL - 2

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1 complaints of offensive odor. Respondent exercised its discretion
2 reasonably in noting a violation and assessing a \$250 penalty for each
3 incident (March 8 and 9, 1984).

4 VI

5 Any Finding of Fact which should be deemed a Conclusion of Law is
6 hereby adopted as such.

7 From these Conclusions, the Board enters this
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 non-conforming permits must be renewed or replaced periodically, as
2 the operating authority shows increasing ability to meet minimum
3 standards and other state and local regulations or else develops a
4 schedule for site closure or change-over. We conclude this because
5 WAC 173-301-180(2) and (3) states:

6 (2) the disposal site or facility shall be
7 located, designed, constructed, operated and
8 maintained so as to prevent the creation of a
9 nuisance, and shall comply with all state and local
10 requirements including but not limited to, if
11 applicable, zoning, land use, fire protection, water
12 pollution prevention, air pollution prevention and
13 esthetics. (Emphasis added.)

14 (3) The owner and/or occupant of any premise
15 shall be responsible for the satisfactory and legal
16 disposal of solid wastes generated by his activity.

17 A landfill site must find itself in conformance with all pertinent
18 regulations and laws, or be on a schedule of compliance (reflected in
19 its planning and budget documents and permits) which will bring it
20 into conformity with environmental and land use regulations.

21 There was no evidence presented showing King County to be on a
22 compliance schedule for meeting minimum standards of pertinent
23 environmental regulations. There was testimony that King County has
24 hopes for improvement in 1985 and 1986. These hopes do not remove the
25 County's responsibility for air pollution control now or on March 8
26 and 9, of this year.

27 V

28 The Notices of Civil Penalty issued to King County for violations
29 of both Regulation I and the Washington Administrative Code were the
30 first issued to the subject landfill site and were based on verified

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1 duration as is, or is likely to be, injurious to
2 human health, plant or animal life, or property, or
3 which unreasonably interferes with enjoyment of life
4 and property.

5 On March 8 and 9, 1984, late in the day offensive odors emanating
6 from the Cedar Hills Landfill site wafted onto residential properties
7 causing persons there to flee indoors and experience nausea and
8 headaches; a circumstance which unreasonably interfered with enjoyment
9 of life and property.

10 IV

11 King County endeavors to operate the subject landfill site in
12 accordance with its permits and certain applicable laws and
13 regulations. Among the pertinent regulations are those at chapter
14 173-301-304 WAC.

15 Sanitary landfill, leachate control--Daily cover.
16 The compacted solid waste shall be compacted and
covered fully with at least six inches of compacted
soil after each day of operation, or as specified by
the jurisdictional health department, and department
of ecology.

17 The King County Health District issued the subject landfill a
18 non-conforming permit because of King County's assertions that it
19 cannot now operate the site to meet minimum standards set forth in WAC
20 173-301 (solid waste handling), particularly at 173-301-304.¹ Such

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- 21
22 1. Operations under a non-conforming permit may have invited odor
23 problems at Cedar Hills, which then appeared like an unwanted
24 dinner guest. Ridding the area of such guest appearances
undoubtedly will require changes in operations, some portion of
which comes about through new equipment and additional personnel.

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these persons and these matters.
4 RCW 43.21B.

5 II

6 Regional air pollution control authorities and the Washington
7 State Department of Ecology are empowered to implement the Clean Air
8 Act through regulations found in the Washington Administrative Code at
9 Chapter 173-400. WAC 173-400-040(5) prohibits the emission of air
10 contaminants which are detrimental to persons or property, as stated
11 here:

12 (5) Emission of air contaminants detrimental to
13 persons or property. No person shall cause or permit
14 the emission of any air contaminant from any source,
15 including any air contaminant whose emission is not
16 otherwise prohibited by this chapter, if the air
contaminant causes detriment to the health, safety,
or welfare of any person, or causes damage to
property or business.

17 A malodorous emission of fumes or gas [odor carrying fractions in
18 methane gas, carbon dioxide (CO₂), and fumes from exposed leachate]
19 which wafts onto neighboring property and interferes with persons'
20 well-being and with those persons' use of their property is an
21 emission prohibited under the above-cited WAC chapter and subsection.

22 III

23 Likewise, under terms of Section 9.11(a) of PSAPCA Regulation I
24 certain air emissions are also prohibited.

25 (a) It shall be unlawful for any person to cause
26 or allow the emission of any air contaminant in
sufficient quantities and of such characteristics and

1 One expert in air pollution control engineering, who is under
2 contract with the County Prosecuting Attorney for odor evaluation of
3 King County landfills, testified that with methods of odor detection
4 he used on several occasions at Cedar Hills he only detected an odor
5 off-site once. He was not at the site or in its vicinity on March 8
6 or 9, 1984, however. This same expert testified to three primary, or
7 notable, sources of odor at landfills: a) fresh garbage, b)
8 decomposing garbage (fractions of which are in waste gas), and c)
9 leachate (the liquid seeping out of decomposing garbage). He asserted
10 the most pervasive odor at any particular site was likely to be the
11 decomposing garbage and further testified that one cannot exactly
12 predict from on-site whether or which of these odors will be
13 detectable off-site at any particular moment.

14 IX

15 The respondent PSAPCA evaluated the complaints and inspectors'
16 reports and issued two formal notices; Notice and Order of Civil
17 Penalty No. 5986 and No. 5987, on April 12, 1984. Each notice charged
18 a violation of WAC 173-400-040(5) and Section 9.11(a) of Regulation I
19 and levied a \$250 penalty (totalling \$500). Feeling aggrieved by
20 this, King County appealed these actions to the Board on May 17, 1984.

21 X

22 Any Conclusion of Law which is deemed a Finding of Fact is hereby
23 adopted as such.

24 From these Findings of Fact, the Board comes to these
25

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VII

The County tries to control waste gas, leachate, and odors at the site through a program of strategic garbage piling, piping of gas and liquid, and flaming-off of waste gas. The Public Works Department states it needs more piping and flame burners and plans to install same. The Department also has petitioned for County funds for 1985 to purchase new and better scrappers, bulldozers and waste transfer equipment for the Cedar Hills site.

The age of the landfill, the occasional overnight exposure of garbage, and the limited equipment available for handling both fresh and decomposing garbage have apparently caused the site to be more difficult to manage in recent years. Consequently, it is not surprising that both new and long-time neighbors might experience and report an incidence of offensive odors. Both the County government and the complaining neighbors testified to a need to improve the operation of the site. The point of departure is their differing sense of urgency and their command of resources to solve the problem(s).

VIII

The sniff action scale utilized by PSAPCA is one of several common methods of odor measurement. The science of measurement and evaluation of odor is rooted in human perceptions, which perceptions vary according to age, gender, smoking habits, and general health. There are both regulatory and medical aspects to odor evaluation; evident in each evaluation instrument.

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1 Act and all pertinent implementing regulations in the administrative
2 code, in addition to other laws or codes under which they operate.

3 V

4 On March 8 and 9, 1984, residents of the nearby neighborhood
5 complained late in the day to respondent Agency of noxious odors
6 interfering with their enjoyment of their property and making them ill.

7 An inspector from respondent PSAPCA came each day to the affected
8 homesites and verified offensive odors between a two and three in
9 intensity when measured on a sniff action scale of one to four (four
10 being the most offensive, that which is so overpowering as to drive a
11 person from the site). The inspections determined the odor was one of
12 garbage, perhaps rotting garbage. A look at the Cedar Hills Landfill
13 the evening of March 8, 1984, showed exposed garbage along the eastern
14 border of the landfill site, one-half mile away from one complainant's
15 home. There was a slight wind coming out of the west on that occasion.

16 The complainants testified the odor on those two days made them
17 nauseated and forced them to stay indoors. They felt particularly
18 impacted by the odor in the evenings. They additionally report they
19 experience odors in the early morning sometimes and one long-time
20 resident who complained on March 8 and 9 recalled he did not remember
21 smelling such odors seven years ago and earlier.

22 VI

23 The Maple Valley area by the subject site is sparsely settled and
24 is largely forested. The perceived garbage waste odors of March 8 and
25 9 could only have emanated from the Cedar Hills Landfill site.

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1 and one-half hours a day, is patrolled at night, and is open all
2 seasons of the year, receiving 2,600 tons of residential and
3 commercial garbage annually.

4 III

5 The landfill is publicly operated and is governed by requirements
6 of the King County Health District, some of whose requirements are an
7 implementation of Washington Administrative Code regulations at
8 173-301 WAC. The site operates under a non-conforming permit which
9 does not mandate full over-covering of garbage at all times.

10 The landfill operators manage the ultimate disposal of garbage in
11 a fashion which will achieve dirt coverage of the waste therein as
12 often as possible, commensurate with available funds, equipment, and
13 personnel. In 1984, \$900,000 is scheduled to be spent for garbage
14 covering at the subject site, and approximately \$5,000,000 is spent
15 annually to operate the entire landfill.

16 Despite the current attempts to manage the site to achieve waste
17 coverage, some notorious odors emanate from the landfill and waft
18 across the site boundaries into a neighborhood nearby. Such odors may
19 be either from new garbage or decomposing garbage waste which exists
20 under anerobic conditions.

21 IV

22 Appellants assert the landfill site may, therefore, not fall under
23 the authority of the respondent PSAPCA and its Regulation I or the
24 Washington Clean Air Act, at 70.94 RCW. Respondent Agency asserts the
25 Cedar Hills Landfill must comply with Regulation I and the Clean Air

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1 Lacey, Washington. Seated for and as the Board were Lawrence J. Faulk
2 and Gayle Rothrock (presiding). The proceedings were officially
3 reported by Nancy Swenson. Respondent elected a formal hearing
4 pursuant to RCW 43.21B.230.

5 Appellants were represented by Darrell Syferd and Michael
6 Linnaberry, Deputy Prosecuting Attorneys for King County. Respondent
7 Agency was represented by its attorney Keith D. McGoffin.

8 Witnesses were sworn and testified. Exhibits were entered.
9 Argument was heard and briefed. From the testimony, evidence, and
10 contentions of the parties, the Board makes these

11 FINDINGS OF FACT

12 I

13 Respondent PSAPCA, pursuant to RCW 43.21B.260, has filed with this
14 Board a certified copy of its Regulation I, and all amendments
15 thereto, which is noticed.

16 II

17 Appellant King County owns and operates a sanitary landfill--the
18 Cedar Hills Landfill--located at 16645-228th Avenue SE, Maple Valley,
19 Washington. They have owned and operated the site since 1964 through
20 their Department of Public Works, Division of Solid Waste. The Solid
21 Waste Division operates six transfer stations, waste transfer
22 vehicles, some rural landfills and the subject landfill site.

23 Waste and garbage is ultimately brought to the subject site,
24 compacted, piled, covered, and its gas vented from 15 active flare
25 jets. The site is actively operated seven days a week at least eight

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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
KING COUNTY DEPARTMENT OF
PUBLIC WORKS, SOLID WASTE
DIVISION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent,

and

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Intervenor.

PCHB Nos. 84-100 and
84-101

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of two Notices of Violation and \$500 in civil penalties for allowing the emission of an air contaminant from the Cedar Hills Landfill site in the Maple Valley-Issaquah area, came on for hearing before the Pollution Control Hearings Board on September 27, 1984, at Seattle, Washington, and on October 5, 1984, at